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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 **LETRINH HOANG, D.O., PHYSICIANS**
13 **FOR INFORMED CONSENT, a not-for-**
14 **profit organization, and CHILDREN'S**
15 **HEALTH DEFENSE, CALIFORNIA**
CHAPTER, a California Nonprofit
Corporation,

16 Plaintiffs,

17 v.

18 **ROB BONTA, in his official capacity as**
19 **Attorney General of California and, ERIKA**
20 **CALDERON, in her official capacity as**
Executive Officer of the Osteopathic
Medical Board of California ("OMBC"),

21 Defendants.

Case No. 2:22-cv-02147-WBS-AC

DECLARATION OF ERIKA
CALDERON, EXECUTIVE
DIRECTOR OF THE
OSTEOPATHIC MEDICAL
BOARD OF CALIFORNIA, IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

Judge: Honorable William B. Shubb
Action Filed: December 1, 2022

22 I, Erika Calderon, declare:

23 1. I am the Executive Director of the Osteopathic Medical Board of California (Board),
24 California Department of Consumer Affairs. I have been the Executive Director of the Board
25 since November 1, 2022. In my official capacity as the Executive Director for the Board, I have
26 personal knowledge of the facts stated herein and, if called as a witness I could and would testify
27 competently to those facts to the best of my knowledge.
28

1 2. The statutory authority and mandate for the powers and duties of Board is provided in
2 the Osteopathic Act (Bus. & Prof. Code, §§ 3600-1 – 3600-5), which provides that the Board
3 shall enforce the statutory provisions governing medical practitioners in Article 12 (commencing
4 with Section 2220), of Chapter 5 of Division 2 of the Business and Professions Code as to
5 osteopathic practitioners. This statutory authority is further detailed in Business and Professions
6 Code §§ 2450-2459.7 (“Provisions Applicable to Osteopathic Physicians and Surgeons”). Under
7 the Osteopathic Act, the Board has established a comprehensive program for licensing,
8 regulating, investigating, and, where appropriate, disciplining physicians. The Board is an entity
9 within the California Department of Consumer Affairs.

10 3. The Board has the responsibility for enforcing the disciplinary provisions in Article
11 12 applicable to its licensees and the Osteopathic Act. The Board is authorized to take
12 administrative action against all persons guilty of violating such laws and possesses all the
13 powers granted for that purpose, including investigating information that a physician may be
14 guilty of unprofessional conduct.

15 4. The mission of the Board is to protect health care consumers through the proper
16 licensing and regulating the practice of osteopathic physicians and surgeons and certain allied
17 health care professionals, as well as through the objective enforcement of the applicable law. The
18 Board also promotes access to quality medical care through its licensing and regulatory functions.
19 Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and
20 disciplinary functions.

21 5. A primary way the Board protects the public is through the investigation of consumer
22 complaints involving the medical care patients have received from osteopathic physicians and
23 surgeons. The Board may also investigate osteopathic physicians and surgeons on its own
24 initiative based upon information it receives from other sources (even anonymous ones). Under
25 either scenario, each case is evaluated to determine whether there has been a potential violation of
26 applicable law. If Board staff determine that the Board lacks jurisdiction over the alleged
27 violation or that there is insufficient evidence of a violation, they will close the case and take no
28 further action.

1 6. Alternatively, if Board staff determine that there may be evidence of a violation, then
2 an investigation is opened. This investigation includes a preliminary evaluation of the case by a
3 medical consultant for the Board, who examines the medical record, any additional evidence, and
4 determines whether there is a potential violation of the standard of care. If the medical consultant
5 determines that a potential violation may exist, the case is referred for further investigation and
6 will be reviewed by a retained outside expert under contract with the Board who has the pertinent
7 education, training, and expertise to evaluate the specific standard of care issues raised by the
8 complaint. That expert will independently evaluate the medical record (without seeing the
9 medical consultant's opinion) and any evidence in the case, and makes an objective evaluation of
10 whether the subject physician violated the standard of care.

11 7. All investigations and their contents are confidential unless and until formal
12 disciplinary action is taken and disciplinary proceedings are commenced.

13 8. At each step of review—the initial intake review, the medical consultant review, and
14 the independent expert review—the complaint against a physician may be closed and rejected if
15 any of the reviewers conclude that there is not sufficient evidence to show a violation of
16 applicable law. Investigations are often closed because no violation has been found. For fiscal
17 year 2019-2020, for example, the Board received 627 complaints and opened 573 investigations.
18 An even smaller number of investigations, 16, were referred to the Attorney General's Office for
19 consideration of filing disciplinary charges.

20 9. If a complaint passes through these hurdles and disciplinary proceedings against the
21 physician are filed, the Board has the burden of proof to show by clear and convincing evidence
22 that the physician violated applicable law. For disciplinary actions involving the quality of
23 medical care a physician provided to patients, the Board has the burden of proof to show by clear
24 and convincing evidence that the physician violated the standard of care.

25 10. If the Board initiates disciplinary proceedings against a physician, the physician is
26 afforded full due process. The physician is entitled to dispute the charges at an administrative
27 hearing presided over by an Administrative Law Judge. The physician's counsel has an
28 opportunity to cross-examine the Board's expert on the issue of the standard of care and may

1 present a defense expert challenging the Board expert on the standard of care. After the hearing,
2 the Administrative Law Judge writes a proposed decision. The proposed decision is then sent to
3 the Board for consideration. The Board members make the final decision on disciplinary matters
4 and can either adopt, modify, or reject the proposed decision, but they are required to give
5 deference to the Administrative Law Judge's findings as to the respective credibility of
6 conflicting expert testimony on the standard of care. If the decision finds grounds for discipline,
7 the physician has the right to seek review of the decision in state court by way of administrative
8 mandamus.

9 11. To date, no osteopathic physician or surgeon has been disciplined by the Board
10 related to the dissemination of COVID-19 misinformation or disinformation as defined in AB
11 2098.

12 12. I understand that the following licensed California osteopathic physician is a Plaintiff
13 in this case:

14 Hoang, Letrinh, D.O., 20A7347

15 13. This physician does not have a history of discipline against her license with the Board
16 for any issue relating to COVID-19 or patient care, other than an administrative citation issued for
17 the use of a fictitious business name without a permit in August 2020.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 23rd day of December, 2022, in Sacramento, California.

21 

22
23 ERIKA CALDERON
24 *Declarant*
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26
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